

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

TEXAS BANKERS ASSOCIATION;
RIO BANK, MCALLEN, TEXAS; and
AMERICAN BANKERS ASSOCIATION

Plaintiffs,

v.

Case No: 7:23-cv-00144

CONSUMER FINANCIAL PROTECTION
BUREAU; and ROHIT CHOPRA, in his
official capacity as Director of the Consumer
Financial Protection Bureau,

Defendants.

**MOTION FOR LEAVE TO FILE BRIEF OF THE RESPONSIBLE BUSINESS
LENDING COALITION, ACCESS PLUS CAPITAL, THE TEXAS ASSOCIATION OF
COMMUNITY DEVELOPMENT CORPORATIONS, ALLIES FOR COMMUNITY
BUSINESS, COMMUNITY FIRST FUND, OPPORTUNITY FINANCE NETWORK,
AND SCALE LINK AS AMICI CURIAE IN SUPPORT OF DEFENDANTS' CROSS-
MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Proposed amici curiae the Responsible Business Lending Coalition (RBLC), Fresno Community Development Financial Institution, d/b/a Access Plus Capital, Texas Association of Community Development Corporations (TACDC), Allies for Community Business (A4CB), Community First Fund, Opportunity Finance Network (OFN), and Great Rivers Community Trust, d/b/a Scale Link move for leave to file the attached Proposed Brief of Amici Curiae in support of Defendants' Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment.¹ Amici do not have parent corporations and do not issue stock. No counsel for any party authored the Proposed Brief in whole or in part, and no person or entity, other than amici and their counsel, made a monetary contribution intended to fund the preparation or submission of the Proposed Brief.

On April 11, 2024, Counsel for proposed amici provided notice of intent to file an amicus brief to all counsel of record and received no objections. Counsel for all parties apart from intervenors XL Funding, LLC and the Equipment Leasing and Finance Association have informed amici counsel that they do not object or do not plan to object to the filing of the proposed amicus brief. Amici counsel did not receive a response from XL Funding or the Equipment Leasing and Finance Association.

ARGUMENT

District courts have discretion to permit participation by amici curiae in matters pending before the court. *See United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990). An amicus brief should normally be allowed when the amicus "has unique information or

¹ Counsel have been admitted *pro hac vice* to represent RBLC and Access Plus Capital. ECF Nos. 92, 93. Since the granting of the *pro hac vice* motions, additional proposed amici have joined the brief. In filing this Motion, counsel also seek leave of the Court to add the additional proposed amici to the case.

perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Trahan v. Long Beach Mortgage Co.*, No. 9:05-CV-29 (TH/KFG), 2006 WL 8440677, at *1 n.1 (E.D. Tex. 2006) (quoting *Community Ass’n for Restoration of the Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999)); *see also United States v. Louisiana*, 751 F. Supp. 608, 620 (“Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case There are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable by the court.”).

The Proposed Brief meets this standard. As described below and in the attached Proposed Brief, amici are financial institutions, lenders, and other stakeholders in the small business lending market with important perspectives to share regarding the Dodd-Frank Section 1071 rulemaking, which are not currently before the Court and which will aid the Court in considering the pending motions for summary judgment. Amici are well-positioned to explain the benefits they, and the small-business-lending market, will derive from the data to be collected and reported under the rule at issue in the underlying matter, and how those benefits weigh in favor of the CFPB’s rulemaking. As such, the Proposed Brief is both timely and useful.

Amicus curiae the Responsible Business Lending Coalition (RBLC) is a network of nonprofit and for-profit lenders, Community Development Financial Institutions (CDFIs), investors, and small business advocates who share a commitment to innovation in small business lending as well as concerns about the rise of irresponsible small business lending practices. RBLC’s members include “covered financial institutions” under Section 1071.

Amicus curiae the Fresno Community Development Financial Institution, d/b/a Access Plus Capital (Access Plus Capital), is a California nonprofit corporation and a certified CDFI that offers loans for small businesses throughout Central California. Access Plus Capital is a “covered financial institution” under Section 1071.

Amicus curiae the Texas Association of Community Development Corporations (TACDC) is a Texas nonprofit membership association of community development corporations (CDCs) and related nonprofit, governmental, and for-profit entities. TACDC has over 130 members spanning the State of Texas. Among other activities, TACDC’s members offer small business loans.

Amicus curiae Allies for Community Business (A4CB) is an Illinois nonprofit corporation and a certified CDFI. A4CB provides loans to businesses and entrepreneurs in Illinois and Indiana. A4CB is a “covered financial institution” as defined by the Final Rule.

Amicus curiae Community First Fund is a Pennsylvania nonprofit corporation and a certified CDFI. Community First Fund offers a variety of small business loans. Community First Fund is a “covered financial institution” as defined by the Final Rule.

Amicus curiae Opportunity Finance Network (OFN) is a leading national network of more than 400 CDFIs from across the United States. OFN is a trusted intermediary between CDFIs and public and private sector partners, including foundations, corporations, banks, government agencies, and others, helping drive investment in CDFIs to catalyze change and create economic opportunities nationwide.

Amicus curiae Great Rivers Community Trust, d/b/a Scale Link (Scale Link) is a Missouri nonprofit corporation and a certified CDFI. Scale Link sources and bundles loans from CDFIs and pools them for banks to purchase on the secondary market, helping to bridge the

funding gap for small businesses and allowing CDFIs to revolve capital more quickly and originate additional small business loans.

Amici thus have “unique information [and] perspective” that can help the Court, *Trahan*, 2006 WL 8440677, at *1 n.1, and amici’s participation and the attached Proposed Brief will provide the Court with information that is timely and useful for the disposition of this case.

CONCLUSION

Accordingly, proposed amici curiae the Responsible Business Lending Coalition, Access Plus Capital, the Texas Association of Community Development Corporations, Allies for Community Business, Community First Fund, Opportunity Finance Network, and Scale Link respectfully request that the Court grant leave to file the attached Proposed Brief of Amici Curiae.

Dated: May 2, 2024

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on May 2, 2024, via the CM/ECF system and served via CM/ECF on all Counsel of record.

/s/ Stephen F. Hayes

Stephen F. Hayes

Counsel for Amici Curiae